CF0000062399

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समक्ष : माननीय उच्च न्यायालय जबलपुर(म0प्र0)
Division Bench (Criminal)

क्रिमिनल अपील क्र0:- 3371 /११

(16196)

15/12/11
by Shri K. Usrate Advocate

अपीलार्थी/आवेदक:- बेको डुला पिता बेड़ी आयतु
जाति-माड़िया, उम्र ३५ वर्ष,
साकिन-लालागुड़ा नया-पारा
थोना कोड़ेनार, जिला बस्तर(म0प्र0)

विरुध्द

प्रत्यर्थी/अनावेदक:- म0प्र0 शासन द्वारा आरक्षी केन्द्र कोड़ेनार,
जिला बस्तर(म0प्र0)

धारा :- ३०२ भा0दं0 वि0

निर्णय दिनांक:- २१/१०/११

सजा :- आजीवन कारावास तथा ५००/- रुपये का अर्थ दण्ड,
अर्थ दण्ड न देने पर १ वर्ष अतिरिक्त सश्रम कारावास.

अपील/आवेदन पत्र वास्ते धारा ३७९(२) दण्ड प्रक्रिया संहिता के तहत

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XI-HC-78

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मामला क्रमांक ..... Cr.A.337/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~DIVISION BENCH:~~

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DILIP R. DESHMUKH, JJ.

22-6-2005

Mr. R.K. Jain, counsel for the appellant.

Mr. Sachin Singh Rajput, Panel Lawyer for the State/ respondent.

Oral.

M.(Cri.)P.No.1584/2004.

Learned counsel for the appellant submitted that this is the second bail application, therefore the appeal may be heard finally and disposed of.

We have heard this appeal for final disposal.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. being aggrieved by the judgment of conviction and sentence dated 21st October, 1999, passed in Sessions Trial No.159/99, whereby the 2nd Additional Sessions Judge, Jagdalpur, after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for one year.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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Brief facts of the prosecution case are that in the night of 26-1-1999 at about 1 a.m. at the residence of Chalki (PW-4) in Village: Nutanpar Murdepara, deceased Poyami Sannu slapped Quasi Koso in connection with the payment of money. On 26-1-1999 Poyami Sannu went to Village: Nutanpar and after marketing, he stayed at the residence of Chalki and accused Beko Doola attacked the deceased in the night with an axe on account of old enmity and committed the murder of Poyami Sannu. Report of the same was lodged on 27-1-1999 at Police Station: Kodenar at about 16:30 hours by Madvi Kosa. On receiving this report, the Station House Officer registered Crime No.7/99 for the commission of offence under Section 302 of the I.P.C. and took up the investigation.

During the investigation, post-mortem of the body of Poyami Sannu was conducted by Dr. Lakhan Juri (PW-2) and he noticed one incised stab wound of the size of 3" x 2" x 1" cavity deep vertically on the right side of temporal region of the skull. The other injury was contusion swelling of size 4" x 2" on the right side of cheek. The doctor opined that all the injuries were anti-mortem in nature and in his opinion cause of the death was comma due to head injury, the nature of death was homicidal.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The Investigating Officer after giving notice to Panchas prepared the Panchanama (Ex.P-5) of the dead body and recorded statements of witnesses, prepared site map (Ex.P-9) of the place of occurrence. The I.O. took into possession the blood stained soil as well as the plain soil from the place of occurrence under Ex.P-10, and the grip of weapon of offence, axe, was taken into possession under Ex.P-15, at the instance of the accused on the basis of the memorandum Ex.P-14 given by the accused. Clothes of the deceased were taken into possession through Ex.P-16.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Jagdalpur, who committed the case to the Court of Sessions Judge, Jagdalpur, from where, the learned 2nd Additional Sessions Judge, received the case on transfer. The learned Additional Sessions Judge after hearing counsel for the accused and the Additional Public Prosecutor, and perusal of record was of the opinion that prima facie, charge under Section 302 of the I.P.C. was made out against the accused/appellant. Therefore, he framed the charge, however, the accused denied the charge and claimed to be tried.

In order to prove the charge against the accused/appellant, the prosecution examined as many as eight witnesses. Thereafter, the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

learned Additional Sessions Judge, recorded the statement of accused under Section 313 of the Cr.P.C. in which the accused denied the evidence of the prosecution and also denied his involvement in committing the murder of Poyami Sannu, and stated that he is innocent and he has been falsely implicated in the crime. After hearing the arguments of the Additional Public Prosecutor and counsel for the accused, learned Additional Sessions Judge convicted the accused/appellant under Section 302 of the I.P.C. and sentenced him accordingly.

At the outset, learned counsel for the accused/appellant argued that the accused has been convicted without any legal evidence available on record.

On the other hand, learned Panel Lawyer argued that the weapon of offence, axe, was recovered at the instance of the accused, therefore, the accused has been convicted rightly on that basis and on the basis of evidence of PW-1 Madvi Kosa.

Having heard learned counsel for the parties, we have perused the judgment and record of the trial Court. The prosecution has tried to prove the offence against the accused/appellant based on the extra judicial confession made by the accused before PW-1 Madvi Kosa & PW-3 Gaagruram. However, the perusal of evidence of these

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

two witnesses shows that both these witnesses have turned hostile. PW-1 has stated that on enquiry from the accused before the Panchas he explained that he had not murdered Poyami Sannu. However, after declaring these witnesses hostile on cross-examination by the Public Prosecutor, PW-1 has stated that the report Ex.P-1 was given by him only. But, in the cross-examination he has not supported the prosecution case and said that he does not know how Poyami Sannu died and he also does not know anything about the death of Poyami Sannu. Poyami Sannu's body was lying in front of the house of Chalki. PW-1 has further stated that he does not know how he had written in the report Ex.P-1 that how Poyami Sannu died, and he had not disclosed to the Police that how Poyami Sannu died. He further stated that it is correct to say that Doola (the accused/appellant) had not appeared before the Panchayat and the report was lodged only after the Panchayat decided to lodge the report. Similar is the evidence of PW-3. Therefore, these two witnesses have not supported the prosecution case.

Perusal of the evidence of PW-6 (Poyami Sannu) shows that witness Chalki informed him about the death of Poyami Sannu, that the accused has committed the murder of deceased Poyami Sannu with Tangia. Similar is the evidence of PW-7 (Oyami Mahangu) who

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आदेश का क्रमां. दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has stated that Chalki informed them that Doola committed the murder of Poyami Sannu (deceased), whereas Chalki himself has turned hostile and he has not supported the prosecution case. Therefore, there is no evidence regarding extra judicial confession or eyewitness evidence in order to connect the accused with the murder of Poyami Sannu.

Now, coming to the question of recovery of axe at the instance of the accused, without going into merits of recovery of axe, there is no report of Serologist on record which shows that human blood of the blood group of the deceased was found on the axe. In the absence of such report, recovery of axe cannot be connected with the murder of Poyami Sannu, because, the axe which was recovered at the instance of the accused is a common axe which is available easily in the village side. There is no other evidence, which connects the accused with the murder of Poyami Sannu. Resultantly, there is no iota of legal evidence on record, which connects the accused with the murder of Poyami Sannu.

We fail to understand that how such a senior Judicial Officer has convicted the accused without any legal evidence on record. He has simply convicted the accused on surmises and conjectures. This

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shows that this Judicial Officer lacks the basic knowledge of law to be applied in the matter of a criminal trial.

In the result, the appeal succeeds and the same is allowed. The conviction and sentence awarded to the accused/appellant are set aside and he is acquitted of the charge under Section 302 of the I.P.C. for the commission of murder of Poyami Sannu. The accused be set at liberty forthwith, if not required in any other case.

In view of this order, M.(Cri.)P.No.1584/2004 stands disposed of.

Parties are entitled for certified copy of this order

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Soma

(पीछे देखिये)